



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
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Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
January 5, 2021 09:21

By: MATT RAMBO 0079092

Confirmation Nbr. 2148578

ANTHONY BERRY, ET AL

CV 21 942548

vs.

Judge: NANCY MARGARET RUSSO

LOWES HOME CENTERS, LLC, ET AL

Pages Filed: 11



**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

ANTHONY AND BARBARA BERRY	)	CASE NO.
1001 Selwyn Road)	
Cleveland Heights, Ohio 44112)	
	)	JUDGE
Plaintiff,)	
)	
v.	)	<u>COMPLAINT</u>
)	
LOWE'S HOME CENTERS, LLC)	
1000 Lowe's Boulevard	)	(WITH JURY DEMAND ENDORSED
Mooresville, North Carolina 28117	)	HEREON)
)	
Also Serve Statutory Agent:)	
Corporation Service Company)	
50 West Broad Street, Suite 1330)	
Columbus, Ohio 43215)	
)	
and)	
)	
SERVICE EXPERTS HEATING AND AIR)	
CONDITIONING LLC)	
2140 Lake Park Boulevard)	
Richardson, Texas 75080)	
)	
Also Serve:)	
Service Experts Heating & Air Conditioning)	
25975 Emery Road, Suite E)	
Warrensville, Heights, Ohio 44128)	

1. Plaintiffs Anthony and Barbara Berry ("Plaintiffs") bring this action for violations of Ohio's Home Solicitation Sales Act (the "HSSA") and Consumer Sales Practices Act ("CSPA") against Service Experts Heating & Air Conditioning LLC ("Service Experts") and Lowe's Home Centers, LLC ("Lowe's") and for fraud in the inducement against Service Experts arising out of an alleged ten-year lease agreement for a home furnace (the "Agreement").

PARTIES, JURISDICTION AND VENUE

2. Plaintiffs Anthony and Barbara Berry are married individuals in their seventies residing at 1001 Selwyn Road, Cleveland Heights, Ohio in Cuyahoga County.

3. Lowe's Home Centers, LLC is a foreign corporation headquartered in Mooresville, North Carolina that operates home improvement retail stores around the country, including in Cuyahoga County, Ohio.

4. Service Experts Heating & Air Conditioning LLC is a foreign corporation headquartered in Richardson, Texas that operates HVAC installation and repair shops around the country, including in Cuyahoga County, Ohio.

5. Jurisdiction and venue are proper in this court because Plaintiffs reside in Cuyahoga County, Ohio and both Lowe's and Service Experts conducted the activity that gives rise to Plaintiffs' claims for relief in Cuyahoga County, Ohio.

STATEMENT OF FACTS

6. In late December 2019, Plaintiffs began to have issues with the furnace in their home at 1001 Selwyn Road, Cleveland Heights, Ohio.

7. On or about December 28, 2019, Plaintiffs visited the Lowe's Home Improvement store located at 24500 Miles Road, Bedford Heights, Ohio to inquire about repair services for their furnace. Plaintiffs had prior dealings with the service department at this particular Lowe's store. Plaintiffs and the employees of the Lowe's arranged for a technician to report to Plaintiff's home to inspect their furnace and advise them as to needed repairs. Plaintiffs were not advised as to who would be visiting their home.

8. On January 3, 2020, an employee from Service Experts reported to Plaintiffs' home and inspected the furnace. The Service Experts employee informed Plaintiffs that they needed a new blower motor for their furnace and that to repair and install the new motor would cost approximately \$900.

9. Plaintiff Anthony Berry responded to the Service Experts employee that he "might as well buy a new one" if the repair was going to be that expensive. The employee informed Plaintiffs that Service Experts would be happy to sell them a new furnace and presented them with three different models to review: "low, medium, and high" priced options.

10. After reviewing their options, Plaintiffs decided to purchase the "medium" priced Lennox model SL280UH090V36B furnace. The Service Experts employee then retired to his Service Experts vehicle to prepare the purchase contract and arrange for installation of the furnace. Plaintiffs were ultimately presented with an Agreement wherein the purchase price of the furnace they chose was listed as \$6,784. Plaintiffs thought this price was high but were in a difficult position and needed a furnace, so they agreed to the installation. A copy of the Agreement is attached hereto as Exhibit A.

11. Service Experts completed the installation of the furnace on January 6, 2020. See Certificate of Installation attached hereto as Exhibit B.

12. After approximately forty-five (45) days, Plaintiffs had not received a bill or invoice for the furnace. Plaintiff Anthony Berry again visited the Miles Road Lowe's store to inquire about paying for the furnace. A Lowe's employee said that it would take a little longer to arrive.

13. When a bill did arrive from Service Experts, Plaintiffs noticed that it was for only \$110.50 and were confused as to why the amount was so low. They had expected to be billed for the entire price of the furnace. Upon closer review of the Agreement, Plaintiffs discovered that they had not actually purchased the furnace but had instead been tricked into leasing the furnace for ten years at \$110.50 per month. The total price Plaintiffs would pay for the furnace was \$13,260.

14. Plaintiffs were shocked and outraged. The lease option, what Service Experts describes as the “Advantage Program,” was never explained to Plaintiffs. Plaintiffs expressly wanted to purchase the furnace, not lease, and would not have agreed to such a ridiculous and costly arrangement.

CLAIM ONE
Violations of the Ohio Home Solicitation Sales Act and Ohio Consumer Sales Practices
Act by Service Experts

15. Plaintiff restates and reasserts all of the allegations contained in Paragraphs 1-14 above as if fully rewritten herein.

16. Plaintiffs are “buyers” as defined by R.C. 1345.21(D).

17. Service Experts is a “seller” as defined by R.C. 1345.21(C).

18. Pursuant to R.C. 1345.21(B) “sale” includes a lease for the purposes of R.C. 1345.21 – 1345.28. The transaction that resulted in Plaintiffs signing an Agreement pertaining the furnace is a “home solicitation sale” as defined by R.C. 1345.21(A).

19. Pursuant to R.C. 1345.23(B)(1) the Agreement presented to Plaintiffs by Service Experts is required to contain the following statement, in bold-face type and in immediate proximity to Plaintiffs’ signature: “You, the buyer, may cancel this transaction at

any time prior to midnight of the third business day after the dates of this transaction, see the attached notice of cancellation for an explanation of this right.”

20. The Agreement presented to Plaintiffs, as shown in Exhibit A does not contain the statement required by R.C. 1345.23(B)(1).

21. Pursuant to R.C. 1345.21(B)(2) a form captioned “notice of cancellation” is required to be “attached to the contract signed by the buyer and be easily detachable” and contain information and statements regarding cancellation of the contract.

22. The Agreement presented to Plaintiffs did not contain a “notice of cancellation” as required by R.C. 1345.21(B)(2).

23. Pursuant to R.C. 1345.21(D)(1), no seller shall “fail to inform each buyer orally, at the time of signing the contract for the goods or service, of the buyer’s right to cancel.”

24. Service Experts failed to inform Plaintiffs orally of their right to cancel.

25. Pursuant to R.C. 1345.28 “failure to comply with sections 1345.21 to 1345.27 of the Revised Code constitutes a deceptive act or practice in connection with a consumer transaction in violation of section 1345.02 of the Revised Code.”

26. Service Experts has failed to comply with R.C. 1345.21(B)(1) and (B)(2).

27. Service Experts failure to comply with R.C. 1345(B)(1) and (B)(2) constitutes a deceptive act or practice pursuant to R.C. 1345.02.

28. Pursuant to R.C. 1345.03, Service Experts’ failure to comply with R.C. 1345(B)(1) and (B)(2) constitute an unconscionable act.

29. Pursuant to R.C. 1345.09, Plaintiffs are entitled to rescind the Agreement, economic damages and noneconomic damages, and an award of reasonable attorney's fees against Service Experts.

CLAIM TWO
Fraud in the Inducement by Service Experts

30. Plaintiff restates and reasserts all of the allegations contained in Paragraphs 1-29 above as if fully rewritten herein.

31. Plaintiffs were induced by Service Experts to enter into the Agreement regarding the furnace through fraud and/or misrepresentation.

32. Service Experts misrepresented the terms and context of the Agreement.

33. Service Experts misrepresentations regarding the Agreement were material, specifically that Plaintiffs were entering into a contract to purchase a furnace, when in fact it is a contract to lease a furnace.

34. Plaintiffs relied upon the material misrepresentations made by Service Experts to their detriment. Specifically, the Plaintiffs were induced to enter into a contract wherein they would ultimately pay nearly double the original price for an already overpriced furnace that they would not even own at the end of the term of the lease.

35. Plaintiffs are entitled to damages, including punitive damages and attorney's fees as a result of Service Experts' fraudulent inducement to enter into the Agreement.

CLAIM THREE
Violations of the Ohio Home Solicitation Sales Act and Ohio Consumer Sales Practices Act by Lowe's

36. Plaintiffs restate and reassert all the allegations contained in Paragraphs 1-35 above as if fully rewritten herein.

37. Plaintiffs are "consumers" as defined by R.C. 1345.01.

38. Lowe's is a "supplier" as defined by R.C. 1345.01.

39. Plaintiffs entered into the Agreement with Service Experts as a result of Lowe's referring Plaintiffs' business to Service Experts. For all intents and purposes, Plaintiffs were dealing with both Lowe's and Service Experts.

40. Service Experts committed violations of the Ohio Home Solicitation Sales Act and the Ohio Consumer Sales Practices Act as set forth above.

41. Lowe's is liable for violations of the Ohio Consumer Sales Practices Act due to its relationship with Service Experts and Service Experts actions in relation to Plaintiffs.

42. Pursuant to R.C. 1345.09, Plaintiffs are entitled to economic damages and noneconomic damages and an award of reasonable attorney's fees against Lowe's.

CLAIM FOUR
Negligence by Lowe's

43. Plaintiffs restate and reassert all the allegation in Paragraphs 1-42 above as fully rewritten herein.

44. Lowe's owed a duty to Plaintiffs to ensure that the contractors it sent to their home had skill and knowledge to properly service their furnace and not violate Ohio's Home Solicitation Sales Act and Consumer Sales Practices Act.

45. Lowe's breached the duty owed to Plaintiffs by negligently providing a contractor it knew or should have know employed practices that violated Ohio's Home Solicitation Sales Act and Consumer Sales Practices Act.

46. As a result of Lowe's breach of the duty owed to Plaintiffs, Plaintiffs were damaged.

WHEREFORE, Plaintiff prays for relief as follows:

- A. With respect to Claim One, rescission of the Agreement and a judgment against Service Experts in excess of \$25,000, plus reasonable attorney's fees.
- B. With respect to Claim Two, a judgment against Service Experts in excess of \$25,000, plus reasonable attorney's fees.
- C. With respect to Claim Three, a judgment against Lowe's in excess of \$25,000 plus reasonable attorney's fees.
- D. With respect to Claim Four, a judgment against Lowes's in excess of \$25,000.
- E. Any such other relief that the Court deems just and proper, including the costs of this action.

Respectfully submitted,

/s/ Matthew C. Rambo

Matthew C. Rambo (0079092)

matthew@freeburglaw.com

David A. Freeburg (0071054)

david@freeburglaw.com

Freeburg & Freeburg LLC

6690 Beta Drive, Suite 320

Mayfield Village, Ohio 44143

Telephone: (440)421-9181

Counsel for Plaintiffs

JURY DEMAND

Plaintiffs hereby request a trial by jury as to all claims presented.

/s/ Matthew C. Rambo

Matthew C. Rambo (0079092)

**Service Experts**HEATING, AIR CONDITIONING &
PLUMBING**440.232.2600**

Toll-free 855-816-8616

**SERVICE EXPERTS
ADVANTAGE PROGRAM AGREEMENT****ServiceExpertsCleveland.com**25975 Emory Road, Suite E
Warrensville Heights, OH 44128
Ohio License #: 26572

Sales Representative: _____		Sales Rep. Telephone Number: _____		Credit Approval Number: _____	
Equipment Type: <input checked="" type="checkbox"/> Heating <input type="checkbox"/> Air Conditioning <input type="checkbox"/> Other (specify) _____				Customer Billing Email Address: <input type="checkbox"/> Opt Out of Bill	
Lessee and Home Owner: Mr. Mrs. Ms. First Name: _____ Middle Name: _____ Last Name or Corporate Name: _____					
Spouse or Co-Home Owner: Mr. Mrs. Ms. First Name: _____ Middle Name: _____ Last Name or Corporate Name: _____					
Installation Address: Number, Street Name, Unit Number _____ City: _____ State: _____ Zip Code: _____ Tel/Fax Number: _____					
Mailing Address: (if different than installation address) Number, Street Name, Unit Number _____ City: _____ State: _____ Zip Code: _____ Tel/Fax Number: _____					
Equipment Replace: <input type="checkbox"/> Gas <input type="checkbox"/> Oil <input type="checkbox"/> Electric <input type="checkbox"/> N/A				Total Installed Cost (excl. taxes): _____	
Preferred delivery and installation date (Delivery and installation on specified date if possible): _____					
Equipment	Quantity	Manufacturer	Model Number	Monthly Lease Rate(s) (excl. taxes)	
1. _____					
2. _____					
3. _____					
4. _____					
5. _____					
6. _____					

FEDERAL CONSUMER LEASING ACT DISCLOSURES

Lessee and Home Owner(s): _____		Lessee and Home Owner(s) Mailing Address: _____	
Customer Email Address: _____		Installation Address: _____	
Telephone Number: _____			
A. Description of Leased Item(s): _____			
B. Amount Due at Lease Signing or Delivery: Total: \$ N/A	C. Monthly Lease Payments: (including tax on lease payments) Your First Monthly Lease Payment of: \$ _____ is due date set forth on the invoice (customer will receive notice of the exact due date at least 15 days in advance of the due date), followed by: 11 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ 12 payments of \$ _____ is due on the date set forth on the invoice (customer will receive notice of the exact due date at least 15 days in advance of the due date). The total amount of monthly payments is \$ _____	D. Other Charges: (not part of your monthly payment) Total: \$ 0.00	E. Total of Payments: (The amount you will have paid by the end of the lease term): \$ _____
F. Purchase Option at End of Lease Term: You do not have an option to purchase the leased property at the end of the lease term.		G. Other Important Terms: See your Lease for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest.	
Official Fees and Taxes: The total amount you will pay for official fees, and taxes over the Terms of this Agreement, whether included with your monthly payments or assessed otherwise: \$ _____ Note that the actual total of fees and taxes may be higher or lower depending on the tax rates in effect at the time a fee or tax is assessed.			

Exhibit A

Exhibit A State-Specific Addendum: Ohio

1. NOTICE RELATING TO HOME IMPROVEMENT CONTRACTS: Because you are leasing the Equipment set forth in this Agreement, it should not be considered a home improvement contract under Ohio law. To the extent that it might nevertheless be so considered, we are providing you with certain information required in connection with such contracts. By providing these notices, Service Experts does not admit that it is required to provide them or that this is a home improvement contract under Ohio law.

1.1 CONTRACTOR INFORMATION: Name of Authorized Technician: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ License Number: _____

1.2 RIGHT TO AN ESTIMATE: Ohio regulations provide, among other things, that, prior to the commencement of a "repair or service," contractors must disclose in writing that consumers have a right to an estimate of the expected costs, in writing or orally, and that the consumer may choose to receive "no estimate." The financial terms of this Agreement are disclosed on the first page, in writing, and Service Experts makes no oral estimates nor does Service Experts permit consumers to waive the disclosures made in this Agreement.

1.3 TIME OF COMPLETION: Estimated Start Date: _____ Approximate Completion Date: _____

1.4 DISCLOSURE OF CANCELLATION RIGHTS: By signing this Exhibit A, you acknowledge that you were orally informed at the time of signing of your right to cancel. I HAVE READ AND UNDERSTAND THIS EXHIBIT A

Property Home Owner _____ Date: _____ Service Experts _____ Date: _____

Property Co-Home Owner (if needed) _____ Date: _____

I HAVE READ AND UNDERSTAND THIS AGREEMENT, FEDERAL CONSUMER LEASING ACT DISCLOSURE, STATE SPECIFIC ADDENDUM, TERMS AND CONDITIONS PROVIDED ON THIS AGREEMENT AND I ACKNOWLEDGE THAT I HAVE BEEN PRESENTED WITH MULTIPLE OPTIONS INCLUDING AN OPTION TO PURCHASE THE EQUIPMENT:

Lessee and Property Home Owner's Name (Print name as it appears on driver's license): _____	
Authorized Property Home Owner Signature: _____	(I have authority to bind the Owner) Date: _____
Name and Signature of Property Home Owner's Spouse or Property Co-Home Owner (if applicable): _____	
Name as it appears on driver's license _____	Signature _____ Date _____
Service Experts RSC Signature: _____	Date: _____

SERVICE EXPERTS ADVANTAGE PROGRAM AGREEMENT - Early Termination Fee Schedule+

7. Limited Warranty. This air Agreement and not a sales contract and we make no representations or warranties as to the Equipment's performance as between you and Source Exports. The equipment is sold "AS IS" AND "WHERE IS". THE EQUIPMENT IS NOT TO BE USED FOR ANY PURPOSES OTHER THAN THAT SPECIFICALLY INTENDED BY SOURCE EXPORTS. INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. However we do warrant that the services performed by us as to the equipment under this agreement will be free from material defects. The duration of such warranty shall continue as long as the Agreement remains in effect, but no less than thirty (30) days from the date of performance. In the event any of our Services fail to conform to this warranty we will repair or replace the service at our expense. We make no representation or warranties as to the performance of the Equipment except for those which are made by statute and which you cannot waive. We are not the manufacturer of the Equipment and we are not making any warranty or guarantee on behalf of the supplier, or the manufacturer of the equipment. Including without limitation the Equipment is supplied by, or derived as described above. EXCEPT AS EXPRESSLY SET FORTH HEREIN, WE MAKE NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. **Limitation on Liability:** You understand and agree that (i) we will not be liable for any loss, damage, expenses, or injury of any type arising out of or related to this Agreement or otherwise caused or contributed to in any way by the supply, installation, use or operation of the Equipment, except to the extent that such loss, damage, injury or expense is directly, indirectly, incidentally, special or consequential damages, even if reasonably foreseeable and (ii) caused by us; and (iii) if we are unable to perform any of our commitments under this Agreement because of circumstances or events beyond our control, we shall be excused from their performance until such time as we shall be able to perform and we shall not be liable for any such failure to perform or delay in performance.

9. **Indemnification:** You will indemnify and hold us harmless from any and all claims, losses, expenses, and costs that we may suffer or pay or may be required to pay, including legal expenses, in connection with or arising from this Agreement or the supply, installation, use and/or operation of the Equipment, including any claims for any injury or death to individuals or damage to the Premises or other property, regardless of the cause, to the fullest extent permitted by law. This obligation survives the termination of this Agreement for any reason.

10. Termination and Default. You may not terminate this Agreement before the end of the Original Term or Extension Month (as applicable), except as provided in Section 17, below. This Agreement may be terminated by us at any time in the event of a Default (as defined below) by you. Upon termination of this Agreement, you may order copies of Promotes for the purposes of replacement and we will charge you the cost of such replacement. In addition, during the Original Term and Extension Month, if you do not pay heretofore due and payable and you will be deemed to be exercising your early termination option as provided in Section 17 of this Agreement. When you no longer lease the Equipment, you will not be required to return it to us; however, you must ensure that the Equipment is returned to its original location. If we fail to agree at the time pursuant to a new agreement, each of the following will be an event of default by you ("Default"): (a) Any bankruptcy, insolvency or receivership proceedings are commenced with respect to you and/or you breach any provision of, or fail to perform any of your obligations under this Agreement, including but not limited to, your obligation to pay the Promote fee; (b) You are convicted of a crime involving fraud or other intentional wrongdoing; (c) You are involved in litigation with another party where there is a Default; we may terminate this Agreement after pursuing any other remedies we may have available; (d) In the event the Equipment is equipped with a device that allows us to access remotely, either now or in the future, information stored on the Equipment, we reserve the right to take steps to enforce our rights under this Agreement, including, but not limited to, remotely disabling the Equipment.

11. Assignment. We may transfer, assign, encumber or otherwise dispose of all or any part of our interest in this Agreement and/or the Equipment to another party at any time without notice to you and without your permission. To the extent permitted by law, you will not assert against any transferee any claims, defenses, set-offs, deductions or counter-claims which you may now or in the future be entitled to assert against us. Except as otherwise provided in this Agreement, you may not transfer, assign or encumber all or part of your interest in this Agreement or the Equipment without our prior written consent (see section 6 (Sale of your Home)).

12. **Invalidity of Provision/Severability:** If any provision of this Agreement or the application hereof to any person or circumstance is held to be invalid or unenforceable, such provision shall be severed and the remainder of this Agreement shall continue to remain in full force and effect subject to such modifications as may be necessary to carry out the provisions and intent of this Agreement.

13. **Governing Law.** This Agreement shall be governed by the laws of the State where the property on which the Equipment is installed is located (without giving effect to internal principles of conflict of laws).

14. Entire Agreement and Amendments: You understand that this Agreement, together with any attachments, state specific addendum, and/or amendments, is the entire agreement between you and us and supersedes all prior agreements, understandings or discussions, whether oral or written, and there are no warranties, representations, or disclosures made by us specifically relating to this Agreement. The Agreement may be amended from time to time by us without notice to you. We reserve the right to modify or amend the Agreement at any time without notice to you. Any such modification or amendment will constitute the entire agreement between you and us regarding this Agreement and any prior, current, subsequent, or further communications, terms and conditions of this Agreement shall prevail.

15. Notices: All notices and other communications required or permitted under this Agreement shall be properly given by the sending party when made in writing and: (a) delivered by a reputable courier service requiring signature for receipt (if mailed by certified or registered first-class mail, postage prepaid, with a return receipt requested); (b) sent by fax as evidenced by a printed confirmation from the sending party's fax machine; or (c) delivered by e-mail to the e-mail address of the receiving party as set forth in the Agreement. Notices shall be deemed to have been properly given if sent by any of the foregoing methods to the e-mail address or fax number of the receiving party. Notices shall be deemed to have been properly given if sent by any of the foregoing methods to the e-mail address or fax number of the receiving party as set forth in the Agreement. Notices shall be deemed to have been properly given if sent by any of the foregoing methods to the e-mail address or fax number of the receiving party as set forth in the Agreement. Notices shall be deemed to have been properly given if sent by any of the foregoing methods to the e-mail address or fax number of the receiving party as set forth in the Agreement.

16. Mandatory Arbitration of Disputes. Any dispute, disagreement or claim between you and Service Experts Air Conditioning and Heating, or its agents or the Equipment, may not be litigated and shall be referred to the parties shall be submitted to final and binding arbitration in a location that is a convenient distance from the premises for you in accordance with the Consumer Arbitration Rules of the American Arbitration Association (the "AAA Consumer Rules"), administered by the American Arbitration Association, except as otherwise provided herein. The arbitration shall take place in the county and state in which the premises are located. No dispute, disagreement or claim is being resolved under this Agreement if the parties have mutually agreed to waive their right to arbitration under this Agreement.

17. SERVICE EXPERTS' AWARD. THE AWARD SHALL ALSO NOT BE AVAILABLE IN ARBITRATION. THE SERVICE EXPERTS' AWARD is the portion of the arbitration award that shall be compensatory and punitive (upon the parties) and it shall be the sole and exclusive remedy between the parties regarding any and all claims and counterclaims presented to the arbitrator. The judgment on the Arbitration Award may be entered in any appropriate court as necessary to pursue judgment. The Arbitration Award shall be based exclusively on the provisions of this Agreement. In addition, in the case of any conflict between the provisions of the AAA Consumer Rules and the provisions of this Agreement, the provisions of this Agreement shall govern. The arbitration award for arbitration, a party must first give the other party at least fifteen (15) days prior written notice of its claim to file the demand. All notices to file must be given in connection with the arbitration shall be as provided in Section 12(a) of the demand for arbitration must be filed within one (1) year after the event giving rise to the arbitration occurred. The arbitration award shall take into account the entire course of dealing between the parties, and it may be awarded and shall be borne from either arbitration or litigation. If you provide a reasonable explanation why your claim is not frivolous and why you cannot prove to file the arbitration claim (see in your written notice, we will pay the filing fee for you). The Arbitration Award shall be made and shall be payable free of any tax or any other charges. The Arbitration Award shall be made and shall be payable free of any tax or any other charges. The date of the breach or other violation of this Agreement to the date of the Arbitration Award. In the event you are the complaining party in any such arbitration, and the amount you are awarded is greater than any demand you submitted at least ten days prior to filing the demand for arbitration, you shall be awarded your costs in the arbitration. If you are the responding party in any such arbitration, and the amount you are awarded is less than any demand or any breach by a party of this Agreement, your party would receive any non-breaching party to be financially harmed or for which such non-breaching party could not be made whole by monetary damages, then in such circumstances, such non-breaching party, in addition to any other remedy to which it may be entitled after or in connection with the arbitration, shall be entitled to equitable relief, including injunctive relief and specific performance, in any action involved in a court of appropriate jurisdiction.

17. **Your Termination Option:** You may not terminate this Agreement except as provided below. Should you wish to terminate this Agreement prior to its expiration, at any time during the Original Term or Extension Month, you will be subject to an early termination fee. The early termination fee is set forth below, and is based on the amount of time remaining in the term of the Agreement. The fee is based on the number of months of maintenance costs. Should you terminate this Agreement prior to the expiration of the Agreement and pay the applicable early termination fee, you may keep the Equipment.

SERVICE EXPERTS ADVANTAGE PROGRAM AGREEMENT - Early Termination Fee Schedule+

Age of Equipment	Early Termination Fee + (Per Year less than one year)	Age of Equipment	Early Termination Fee + (Per Year less than one year)
0 to less than 1 yr. old	100%	0 to less than 1 yr. old	74%
1 to less than 2 yr. old	80%	1 to less than 10 yr. old	61%
2 to less than 3 yr. old	66%	10 to less than 11 yr. old	61%
3 to less than 4 yr. old	52%	11 to less than 12 yr. old	53%
4 to less than 5 yr. old	45%	12 to less than 13 yr. old	43%
5 to less than 6 yr. old	38%	13 to less than 14 yr. old	31%
6 to less than 7 yr. old	33%	14 to less than 15 yr. old	19%
7 to less than 8 yr. old	23%	15 years old and upward	5%

* The Early Termination Fee for the Equipment is based on the percentage of the original "Total Installed Cost" of the Equipment. All applicable taxes will be added to the amount Early Termination Fee.

18. **Security Interest: Protecting Our Rights in the Equipment.** To protect our rights in the Equipment, we may register a notice of security or ownership in the Equipment as we deem appropriate, including a notice on file in the premises. You agree to sign and give us any documents or guarantees we need to preserve our rights in the Equipment and protect us against any claims to it.

19. Your Signature: By signing this Agreement, you represent that are both (a) at least eighteen (18) years of age and (b) an individual citizen or resident of the United States and that you have all needed authorization to

20. **Notice of Right to Cancel:** You may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction, unless a different time period applies under state law. See the included

21. **Title Search:** Service Experts expressly reserves the right, prior to or during any term of the Lease to perform a title search on the Premises. If anyone who has signed this Agreement is not found on this title of the Premises, Service Experts will provide an amended Agreement reflecting only those signatures found on the title of the



Service Experts

HEATING, AIR CONDITIONING &
PLUMBING



CERTIFICATE OF INSTALLATION

- ☒ Equipment documentation provided to customer ☒ Explained PLUS™ Maintenance Agreement
☒ Service stickers placed on all equipment ☒ Explained comfort system controls and operation

As the installer of your home comfort system, I take great pride in my workmanship and have done my very best to ensure that you will enjoy many years of trouble-free operation. This certificate is your guarantee that the work has been completed in accordance with the agreement terms.

Finally, I would like to thank you for the privilege of installing your equipment, and I assure you that even though the job is complete, we look forward to serving you in the future.

Installer

1620
Date

ACTION ITEMS/COMMENTS

Installed new furnace and air handler

Date of Sale

___/___/___

Date of Delivery

___/___/___

Dealer Number

5 3 4 8 1 2

☐ CASH ☐ VISA ☐ M.C ☐ AMEX

☐ DISC ☐ SEI ☐ Check # _____

Print Name

Exp. ___/___/___

Acct.

Auth Code

Exhibit B

Credit Plan

Balance Due \$

Electronically Filed 01/05/2021 09:21 / CV 21 942548 / Confirmation Nbr. 2148578 / CLDLJ
The work performed has been completed to my satisfaction.

Customer Signature

Date

THANK YOU!

Branch 162
Ohio License #: 26672

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CASE NO.
CV21942548

D1 CM

SUMMONS NO.
43347011

Rule 4 (B) Ohio

Rules of Civil
Procedure

ANTHONY BERRY, ET AL
VS

LOWES HOME CENTERS, LLC, ET AL

PLAINTIFF

DEFENDANT

SUMMONS

LOWE'S HOME CENTERS, LLC
1000 LOWE'S BOULEVARD
MOORSEVILLE NC 28117

Said answer is required to be served on:



Plaintiff's Attorney

MATT RAMBO
6690 BETA DRIVE, STE 320
MAYFIELD VILLAGE, OH 44143-0000

Case has been assigned to Judge:

NANCY MARGARET RUSSO
Do not contact judge. Judge's name is given for
attorney's reference only.

DATE SENT

Jan 5, 2021

NAILAH K. BYRD
Clerk of the Court of Common Pleas

By

Deputy



You have been named defendant in a sums
complaint (copy attached hereto) filed in Cuyahoga
County Court of Common Pleas, Cuyahoga County
Justice Center, Cleveland, Ohio 44113, by the
plaintiff named herein.

You are hereby summoned and required to answer
the complaint within 28 days after service of this
summons upon you, exclusive of the day of service.

Said answer is required to be served on Plaintiff's
Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court
within 3 days after service of said answer on
plaintiff's attorney.

If you fail to do so, judgment by default will be
rendered against you for the relief demanded in the
complaint.

COMPLAINT FILED 01/05/2021



CASE NO.
CV21942548

D2 CM

SUMMONS NO.
43347012

Rule 4 (B) Ohio

Rules of Civil
Procedure

ANTHONY BERRY, ET AL
VS

LOWES HOME CENTERS, LLC, ET AL

PLAINTIFF

DEFENDANT

SUMMONS

CORPORATION SERVICE COMPANY
STATUTORY AGENT
50 WEST BROAD STREET
COLUMBUS OH 43215

Said answer is required to be served on:



Plaintiff's Attorney

MATT RAMBO
6690 BETA DRIVE, STE 320
MAYFIELD VILLAGE, OH 44143-0000

Case has been assigned to Judge:

NANCY MARGARET RUSSO
Do not contact judge. Judge's name is given for
attorney's reference only.

DATE SENT

Jan 5, 2021

NAILAH K. BYRD
Clerk of the Court of Common Pleas

Nailah K. Byrd

By _____

Deputy



You have been named defendant in a sums
complaint (copy attached hereto) filed in Cuyahoga
County Court of Common Pleas, Cuyahoga County
Justice Center, Cleveland, Ohio 44113, by the
plaintiff named herein.

You are hereby summoned and required to answer
the complaint within 28 days after service of this
summons upon you, exclusive of the day of service.

Said answer is required to be served on Plaintiff's
Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court
within 3 days after service of said answer on
plaintiff's attorney.

If you fail to do so, judgment by default will be
rendered against you for the relief demanded in the
complaint.

COMPLAINT FILED 01/05/2021





Date Produced: 01/18/2021

CERTIFIED MAIL SOLUTIONS INC.:

The following is the delivery information for Certified Mail™/RRE item number 9314 8001 1300 3543 9055 75. Our records indicate that this item was delivered on 01/11/2021 at 12:26 p.m. in COLUMBUS, OH 43215. The scanned image of the recipient information is provided below.

Signature of Recipient :

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

Address of Recipient :

A handwritten address in black ink, consisting of a long horizontal line with a large, stylized 'Z' or 'S' shape below it.

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

CASE NO.
CV21942548

D3 CM

SUMMONS NO.
43347013

Rule 4 (B) Ohio

Rules of Civil
Procedure

ANTHONY BERRY, ET AL
VS

LOWES HOME CENTERS, LLC, ET AL

PLAINTIFF

DEFENDANT

SUMMONS

SERVICE EXPERTS HEATING AND AIR
CONDITIONING LLC
2140 LAKE PARK BOULEVARD
RICHARDSON TX 75080

Said answer is required to be served on:



Plaintiff's Attorney

MATT RAMBO
6690 BETA DRIVE, STE 320
MAYFIELD VILLAGE, OH 44143-0000

Case has been assigned to Judge:

NANCY MARGARET RUSSO
Do not contact judge. Judge's name is given for
attorney's reference only.

DATE SENT

Jan 5, 2021

NAILAH K. BYRD
Clerk of the Court of Common Pleas

By

Deputy



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complaint (copy attached hereto) filed in Cuyahoga
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Attorney (Address denoted by arrow at left.)

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within 3 days after service of said answer on
plaintiff's attorney.

If you fail to do so, judgment by default will be
rendered against you for the relief demanded in the
complaint.

COMPLAINT FILED 01/05/2021



CASE NO.
CV21942548

D4 CM

SUMMONS NO.
43347014

Rule 4 (B) Ohio

Rules of Civil
Procedure

ANTHONY BERRY, ET AL
VS

LOWES HOME CENTERS, LLC, ET AL

PLAINTIFF

DEFENDANT

SUMMONS

SERVICE EXPERTS HEATING & AIR
CONDITIONING
25975 EMERY ROAD, SUITE E
WARRENSVILLE HEIGHTS OH 44128

You have been named defendant in a sums
complaint (copy attached hereto) filed in Cuyahoga
County Court of Common Pleas, Cuyahoga County
Justice Center, Cleveland, Ohio 44113, by the
plaintiff named herein.

You are hereby summoned and required to answer
the complaint within 28 days after service of this
summons upon you, exclusive of the day of service.

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Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court
within 3 days after service of said answer on
plaintiff's attorney.

If you fail to do so, judgment by default will be
rendered against you for the relief demanded in the
complaint.

Said answer is required to be served on:



Plaintiff's Attorney

MATT RAMBO
6690 BETA DRIVE, STE 320
MAYFIELD VILLAGE, OH 44143-0000

Case has been assigned to Judge:

NANCY MARGARET RUSSO
Do not contact judge. Judge's name is given for
attorney's reference only.

NAILAH K. BYRD
Clerk of the Court of Common Pleas



DATE SENT

Jan 5, 2021

By

Deputy

COMPLAINT FILED 01/05/2021





Date Produced: 01/25/2021

CERTIFIED MAIL SOLUTIONS INC.:

The following is the delivery information for Certified Mail™/RRE item number 9314 8001 1300 3543 9056 29. Our records indicate that this item was delivered on 01/21/2021 at 10:42 a.m. in CLEVELAND, OH 44128. The scanned image of the recipient information is provided below.

Signature of Recipient :

BC RT3D
Covid-19

Address of Recipient :

25975
Emery

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

CASE NO.
CV21942548

D4 CM

SUMMONS NO.
43347014

Rule 4 (B) Ohio

Rules of Civil
Procedure

ANTHONY BERRY, ET AL
VS

LOWES HOME CENTERS, LLC, ET AL

PLAINTIFF

DEFENDANT

SUMMONS

SERVICE EXPERTS HEATING & AIR
CONDITIONING
25975 EMERY ROAD, SUITE E
WARRENSVILLE HEIGHTS OH 44128

Said answer is required to be served on:



Plaintiff's Attorney

MATT RAMBO
6690 BETA DRIVE, STE 320
MAYFIELD VILLAGE, OH 44143-0000

Case has been assigned to Judge:

NANCY MARGARET RUSSO
Do not contact judge. Judge's name is given for
attorney's reference only.

DATE SENT

Jan 5, 2021

By

Deputy

COMPLAINT FILED 01/05/2021

You have been named defendant in a sums
complaint (copy attached hereto) filed in Cuyahoga
County Court of Common Pleas, Cuyahoga County
Justice Center, Cleveland, Ohio 44113, by the
plaintiff named herein.

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the complaint within 28 days after service of this
summons upon you, exclusive of the day of service.

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If you fail to do so, judgment by default will be
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complaint.

NAILAH K. BYRD
Clerk of the Court of Common Pleas

Nailah K. Byrd





Date Produced: 01/25/2021

CERTIFIED MAIL SOLUTIONS INC.:

The following is the delivery information for Certified Mail™/RRE item number 9314 8001 1300 3543 9056 29. Our records indicate that this item was delivered on 01/21/2021 at 10:42 a.m. in CLEVELAND, OH 44128. The scanned image of the recipient information is provided below.

Signature of Recipient :

PK RT3D
Covid-19

Address of Recipient :

25975
Emery

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

REQUEST FOR SERVICE
January 22, 2021 10:15

By: MATT RAMBO 0079092

Confirmation Nbr. 2162926

ANTHONY BERRY, ET AL

CV 21 942548

vs.

LOWES HOME CENTERS, LLC, ET AL

Judge: NANCY MARGARET RUSSO

Pages Filed: 1



Common Pleas Court of Cuyahoga County, Ohio
Nailah K. Byrd, Clerk of Courts

INSTRUCTIONS FOR SERVICE

Anthony Berry, et al.
Plaintiff(s)

Case Number CV-21-942548

Judge: Nancy Margaret Russo

Vs.
Lowes Home Centers, LLC, et al.
Defendants(s)

Date: 01/22/2021

Method of Service Requested:

Certified Mail Service ☒ Ordinary Mail Service ☐ Federal Express Service ☐

Personal Service by the Sheriff of _____ County ____

Residence Service by the Sheriff of _____ County ____

Personal Service By Process Server _____

Residence Service by Process Server _____

Civ.R. 4.7 Waiver Requested _____

Name(s) and Address(es) of Parties to Serve:

Service Experts Heating & Air Conditioning LLC
c/o Corporation Service Company
50 West Broad Street, Suite 1330
Columbus, Ohio 43215

Additional Instructions:

Please serve the above named defendant at the address provided via Certified Mail.

Filing Party Name: Matthew Rambo Supreme Court ID if applicable: 0079092

Phone Number: 440-421-9181

For Use by Sheriff or Process Server Only

Number of Service Attempts: 15

Electronically Filed 01/22/2021 10:46 / SERVICE / CV-21-942548 / Confirmation Nbr. 2162926 / CLRCS

Address for Service if Different from address included above: _____



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

REQUEST FOR SERVICE
January 22, 2021 10:15

By: MATT RAMBO 0079092

Confirmation Nbr. 2162926

ANTHONY BERRY, ET AL

CV 21 942548

vs.

Judge: NANCY MARGARET RUSSO

LOWES HOME CENTERS, LLC, ET AL

Pages Filed: 11

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

ANTHONY AND BARBARA BERRY	)	CASE NO.
1001 Selwyn Road)	
Cleveland Heights, Ohio 44112)	
	)	JUDGE
Plaintiff,)	
)	
v.	)	<u>COMPLAINT</u>
)	
LOWE'S HOME CENTERS, LLC)	
1000 Lowe's Boulevard	)	(WITH JURY DEMAND ENDORSED
Mooresville, North Carolina 28117	)	HEREON)
)	
Also Serve Statutory Agent:)	
Corporation Service Company)	
50 West Broad Street, Suite 1330)	
Columbus, Ohio 43215)	
)	
and)	
)	
SERVICE EXPERTS HEATING AND AIR)	
CONDITIONING LLC)	
2140 Lake Park Boulevard)	
Richardson, Texas 75080)	
)	
Also Serve:)	
Service Experts Heating & Air Conditioning)	
25975 Emery Road, Suite E)	
Warrensville, Heights, Ohio 44128)	

1. Plaintiffs Anthony and Barbara Berry ("Plaintiffs") bring this action for violations of Ohio's Home Solicitation Sales Act (the "HSSA") and Consumer Sales Practices Act ("CSPA") against Service Experts Heating & Air Conditioning LLC ("Service Experts") and Lowe's Home Centers, LLC ("Lowe's") and for fraud in the inducement against Service Experts arising out of an alleged ten-year lease agreement for a home furnace (the "Agreement").

PARTIES, JURISDICTION AND VENUE

2. Plaintiffs Anthony and Barbara Berry are married individuals in their seventies residing at 1001 Selwyn Road, Cleveland Heights, Ohio in Cuyahoga County.

3. Lowe's Home Centers, LLC is a foreign corporation headquartered in Mooresville, North Carolina that operates home improvement retail stores around the country, including in Cuyahoga County, Ohio.

4. Service Experts Heating & Air Conditioning LLC is a foreign corporation headquartered in Richardson, Texas that operates HVAC installation and repair shops around the country, including in Cuyahoga County, Ohio.

5. Jurisdiction and venue are proper in this court because Plaintiffs reside in Cuyahoga County, Ohio and both Lowe's and Service Experts conducted the activity that gives rise to Plaintiffs' claims for relief in Cuyahoga County, Ohio.

STATEMENT OF FACTS

6. In late December 2019, Plaintiffs began to have issues with the furnace in their home at 1001 Selwyn Road, Cleveland Heights, Ohio.

7. On or about December 28, 2019, Plaintiffs visited the Lowe's Home Improvement store located at 24500 Miles Road, Bedford Heights, Ohio to inquire about repair services for their furnace. Plaintiffs had prior dealings with the service department at this particular Lowe's store. Plaintiffs and the employees of the Lowe's arranged for a technician to report to Plaintiff's home to inspect their furnace and advise them as to needed repairs. Plaintiffs were not advised as to who would be visiting their home.

8. On January 3, 2020, an employee from Service Experts reported to Plaintiffs' home and inspected the furnace. The Service Experts employee informed Plaintiffs that they needed a new blower motor for their furnace and that to repair and install the new motor would cost approximately \$900.

9. Plaintiff Anthony Berry responded to the Service Experts employee that he "might as well buy a new one" if the repair was going to be that expensive. The employee informed Plaintiffs that Service Experts would be happy to sell them a new furnace and presented them with three different models to review: "low, medium, and high" priced options.

10. After reviewing their options, Plaintiffs decided to purchase the "medium" priced Lennox model SL280UH090V36B furnace. The Service Experts employee then retired to his Service Experts vehicle to prepare the purchase contract and arrange for installation of the furnace. Plaintiffs were ultimately presented with an Agreement wherein the purchase price of the furnace they chose was listed as \$6,784. Plaintiffs thought this price was high but were in a difficult position and needed a furnace, so they agreed to the installation. A copy of the Agreement is attached hereto as Exhibit A.

11. Service Experts completed the installation of the furnace on January 6, 2020. See Certificate of Installation attached hereto as Exhibit B.

12. After approximately forty-five (45) days, Plaintiffs had not received a bill or invoice for the furnace. Plaintiff Anthony Berry again visited the Miles Road Lowe's store to inquire about paying for the furnace. A Lowe's employee said that it would take a little longer to arrive.

13. When a bill did arrive from Service Experts, Plaintiffs noticed that it was for only \$110.50 and were confused as to why the amount was so low. They had expected to be billed for the entire price of the furnace. Upon closer review of the Agreement, Plaintiffs discovered that they had not actually purchased the furnace but had instead been tricked into leasing the furnace for ten years at \$110.50 per month. The total price Plaintiffs would pay for the furnace was \$13,260.

14. Plaintiffs were shocked and outraged. The lease option, what Service Experts describes as the “Advantage Program,” was never explained to Plaintiffs. Plaintiffs expressly wanted to purchase the furnace, not lease, and would not have agreed to such a ridiculous and costly arrangement.

CLAIM ONE
Violations of the Ohio Home Solicitation Sales Act and Ohio Consumer Sales Practices Act by Service Experts

15. Plaintiff restates and reasserts all of the allegations contained in Paragraphs 1-14 above as if fully rewritten herein.

16. Plaintiffs are “buyers” as defined by R.C. 1345.21(D).

17. Service Experts is a “seller” as defined by R.C. 1345.21(C).

18. Pursuant to R.C. 1345.21(B) “sale” includes a lease for the purposes of R.C. 1345.21 – 1345.28. The transaction that resulted in Plaintiffs signing an Agreement pertaining the furnace is a “home solicitation sale” as defined by R.C. 1345.21(A).

19. Pursuant to R.C. 1345.23(B)(1) the Agreement presented to Plaintiffs by Service Experts is required to contain the following statement, in bold-face type and in immediate proximity to Plaintiffs’ signature: “You, the buyer, may cancel this transaction at

any time prior to midnight of the third business day after the dates of this transaction, see the attached notice of cancellation for an explanation of this right.”

20. The Agreement presented to Plaintiffs, as shown in Exhibit A does not contain the statement required by R.C. 1345.23(B)(1).

21. Pursuant to R.C. 1345.21(B)(2) a form captioned “notice of cancellation” is required to be “attached to the contract signed by the buyer and be easily detachable” and contain information and statements regarding cancellation of the contract.

22. The Agreement presented to Plaintiffs did not contain a “notice of cancellation” as required by R.C. 1345.21(B)(2).

23. Pursuant to R.C. 1345.21(D)(1), no seller shall “fail to inform each buyer orally, at the time of signing the contract for the goods or service, of the buyer’s right to cancel.”

24. Service Experts failed to inform Plaintiffs orally of their right to cancel.

25. Pursuant to R.C. 1345.28 “failure to comply with sections 1345.21 to 1345.27 of the Revised Code constitutes a deceptive act or practice in connection with a consumer transaction in violation of section 1345.02 of the Revised Code.”

26. Service Experts has failed to comply with R.C. 1345.21(B)(1) and (B)(2).

27. Service Experts failure to comply with R.C. 1345(B)(1) and (B)(2) constitutes a deceptive act or practice pursuant to R.C. 1345.02.

28. Pursuant to R.C. 1345.03, Service Experts’ failure to comply with R.C. 1345(B)(1) and (B)(2) constitute an unconscionable act.

29. Pursuant to R.C. 1345.09, Plaintiffs are entitled to rescind the Agreement, economic damages and noneconomic damages, and an award of reasonable attorney's fees against Service Experts.

CLAIM TWO
Fraud in the Inducement by Service Experts

30. Plaintiff restates and reasserts all of the allegations contained in Paragraphs 1-29 above as if fully rewritten herein.

31. Plaintiffs were induced by Service Experts to enter into the Agreement regarding the furnace through fraud and/or misrepresentation.

32. Service Experts misrepresented the terms and context of the Agreement.

33. Service Experts misrepresentations regarding the Agreement were material, specifically that Plaintiffs were entering into a contract to purchase a furnace, when in fact it is a contract to lease a furnace.

34. Plaintiffs relied upon the material misrepresentations made by Service Experts to their detriment. Specifically, the Plaintiffs were induced to enter into a contract wherein they would ultimately pay nearly double the original price for an already overpriced furnace that they would not even own at the end of the term of the lease.

35. Plaintiffs are entitled to damages, including punitive damages and attorney's fees as a result of Service Experts' fraudulent inducement to enter into the Agreement.

CLAIM THREE
Violations of the Ohio Home Solicitation Sales Act and Ohio Consumer Sales Practices Act by Lowe's

36. Plaintiffs restate and reassert all the allegations contained in Paragraphs 1-35 above as if fully rewritten herein.

37. Plaintiffs are "consumers" as defined by R.C. 1345.01.

38. Lowe's is a "supplier" as defined by R.C. 1345.01.

39. Plaintiffs entered into the Agreement with Service Experts as a result of Lowe's referring Plaintiffs' business to Service Experts. For all intents and purposes, Plaintiffs were dealing with both Lowe's and Service Experts.

40. Service Experts committed violations of the Ohio Home Solicitation Sales Act and the Ohio Consumer Sales Practices Act as set forth above.

41. Lowe's is liable for violations of the Ohio Consumer Sales Practices Act due to its relationship with Service Experts and Service Experts actions in relation to Plaintiffs.

42. Pursuant to R.C. 1345.09, Plaintiffs are entitled to economic damages and noneconomic damages and an award of reasonable attorney's fees against Lowe's.

CLAIM FOUR
Negligence by Lowe's

43. Plaintiffs restate and reassert all the allegation in Paragraphs 1-42 above as fully rewritten herein.

44. Lowe's owed a duty to Plaintiffs to ensure that the contractors it sent to their home had skill and knowledge to properly service their furnace and not violate Ohio's Home Solicitation Sales Act and Consumer Sales Practices Act.

45. Lowe's breached the duty owed to Plaintiffs by negligently providing a contractor it knew or should have know employed practices that violated Ohio's Home Solicitation Sales Act and Consumer Sales Practices Act.

46. As a result of Lowe's breach of the duty owed to Plaintiffs, Plaintiffs were damaged.

WHEREFORE, Plaintiff prays for relief as follows:

- A. With respect to Claim One, rescission of the Agreement and a judgment against Service Experts in excess of \$25,000, plus reasonable attorney's fees.
- B. With respect to Claim Two, a judgment against Service Experts in excess of \$25,000, plus reasonable attorney's fees.
- C. With respect to Claim Three, a judgment against Lowe's in excess of \$25,000 plus reasonable attorney's fees.
- D. With respect to Claim Four, a judgment against Lowes's in excess of \$25,000.
- E. Any such other relief that the Court deems just and proper, including the costs of this action.

Respectfully submitted,

/s/ Matthew C. Rambo
Matthew C. Rambo (0079092)
matthew@freeburglaw.com
David A. Freeburg (0071054)
david@freeburglaw.com
Freeburg & Freeburg LLC
6690 Beta Drive, Suite 320
Mayfield Village, Ohio 44143
Telephone: (440)421-9181
Counsel for Plaintiffs

JURY DEMAND

Plaintiffs hereby request a trial by jury as to all claims presented.

/s/ Matthew C. Rambo
Matthew C. Rambo (0079092)

**Service Experts**HEATING, AIR CONDITIONING &
PLUMBING**440.232.2600**

Toll-free 855-816-8616

**SERVICE EXPERTS
ADVANTAGE PROGRAM AGREEMENT****ServiceExpertsCleveland.com**25975 Emery Road, Suite E
Warrensville Heights, OH 44128
Ohio License #: 26672

Sales Representative: _____		Sales Rep. Telephone Number: _____		Credit Approval Number: _____	
Equipment Type: <input checked="" type="checkbox"/> Heating <input type="checkbox"/> Air Conditioning <input type="checkbox"/> Other (specify) _____				Customer Billing Email Address: <input type="checkbox"/> Opt Out of Ebill	
Lessee and Home Owner		Mr. Mrs. Ms. First Name: _____	Middle Name: _____	Last Name or Corporate Name: _____	
Spouse or Co-Home Owner		Mr. Mrs. Ms. First Name: _____	Middle Name: _____	Last Name or Corporate Name: _____	
Installation Address: Number, Street Name, Unit Number		City: _____	State: _____	Zip Code: _____	Tel/Fax Number: _____
Mailing Address: (if different than installation address) Number, Street Name, Unit Number		City: _____	State: _____	Zip Code: _____	Tel/Fax Number: _____
Equipment Replace: <input checked="" type="checkbox"/> Gas <input type="checkbox"/> Oil <input type="checkbox"/> Electric <input type="checkbox"/> N/A				Total Installed Cost (excl. taxes): _____	
Preferred delivery and installation date (Delivery and installation on specified date if possible): _____					
Equipment	Quantity	Manufacturer	Model Number	Monthly Lease Rate(s) (excl. taxes)	
1. _____	_____	_____	_____	_____	
2. _____	_____	_____	_____	_____	
3. _____	_____	_____	_____	_____	
4. _____	_____	_____	_____	_____	
5. _____	_____	_____	_____	_____	
6. _____	_____	_____	_____	_____	

FEDERAL CONSUMER LEASING ACT DISCLOSURES**Lessor: SERVICE EXPERTS**

Lessee and Home Owner(s): _____ Lessee and Home Owner(s) Mailing Address: _____
 Customer Email Address: _____ Installation Address: _____
 Telephone Number: _____

A. Description of Leased Item(s):

B. Amount Due at Lease Signing or Delivery:
Total: \$ N/A

C. Monthly Lease Payments:

(including tax on lease payments)

Your First Monthly Lease Payment of: \$ _____ is due
 date set forth on the invoice (customer will receive notice of the
 exact due date at least 15 days in advance of the due date), followed by:

11 payments of \$ _____
 12 payments of \$ _____
 12 payments of \$ _____
 12 payments of \$ _____
 12 payments of \$ _____
 12 payments of \$ _____
 12 payments of \$ _____
 12 payments of \$ _____
 12 payments of \$ _____
 12 payments of \$ _____

is due on the date set forth on the invoice (customer will receive notice
 of the exact due date at least 15 days in advance of the due date).

The total amount of monthly payments is \$ _____

D. Other Charges:
 (not part of your monthly
 payment)
Total: \$ 0.00

E. Total of Payments:
 (The amount you will have paid by the
 end of the lease term): \$ _____

Exhibit A

F. Purchase Option at End of Lease Term: You do not have an option to purchase the leased
 property at the end of the lease term.

G. Other important Terms: See your Lease for additional information on early
 termination, purchase options and maintenance responsibilities, warranties, late and
 default charges, insurance, and any security interest.

Official Fees and Taxes: The total amount you will pay for official fees, and taxes over the Terms of this Agreement, whether included with your monthly payments or assessed
 otherwise: \$ _____. Note that the actual total of fees and taxes may be higher or lower depending on the tax rates in effect at the time a fee or tax is assessed.

Exhibit A State-Specific Addendum: Ohio

1. NOTICE RELATING TO HOME IMPROVEMENT CONTRACTS: Because you are leasing the Equipment set forth in this Agreement, it should not be
 considered a home improvement contract under Ohio law. To the extent that it might nevertheless be so considered, we are providing you with certain informa-
 tion required in connection with such contracts. By providing these notices, Service Experts does not admit that it is required to provide them or that this is a
 home improvement contract under Ohio law.

1.1 CONTRACTOR INFORMATION: Name of Authorized Technician: _____

Address: _____

City: _____

Telephone: _____

State: _____

Zip: _____

License Number: _____

Electronically Filed 01/22/2021 10:46:47 SERVICE / CV 21-942548 / Confirmation Nbr. 2162928 / CLRC

1.2 RIGHT TO AN ESTIMATE: Ohio regulations provide, among other things, that, prior to the commencement of a "repair or service," contractors must
 disclose in writing that consumers have a right to an estimate of the expected costs, in writing or orally, and that the consumer may choose to receive "no
 estimate." The financial terms of this Agreement are disclosed on the first page, in writing, and Service Experts makes no oral estimates nor does Service
 Experts permit consumers to waive the disclosures made in this Agreement.

[illegible][illegible][illegible]

14. Entire Agreement and Amendment. You understand that this Agreement, together with any attachments and amendments, and all communications, including electronic communications, between you and the Equipment is the entire agreement between you and the Equipment, and that you are not to be bound by any oral or written communications, including electronic communications, that are not in this Agreement. This Agreement may be amended from time to time by notice in print or by electronic means, by either of us by any method permitted by law. Should there be any discrepancy between this Agreement and any prior, current, subsequent, or other additional terms and conditions, the terms of this Agreement shall prevail over all other terms and conditions. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and any other terms and conditions, the terms and conditions of this Agreement shall prevail.

[illegible][illegible]

17. Your termination Option. You may not terminate this Agreement except as provided below. Should you wish to terminate this Agreement prior to its expiration at any time during the Original Term or Extension month(s), you will be subject to an early termination fee. This early termination fee is set forth below, and is based on (and among other things), the unped cost of the equipment and related installation, finance, service and maintenance costs. Should you terminate this Agreement prior to the expiration of the Agreement and pay the appropriate early termination fee, you may keep the equipment.

SERVICE EXPERT'S ADVANTAGE PROGRAM AGREEMENT - Early Termination Fee Schedule*			
Age of Equipment	Early Termination Fee + % of Total Installed Cost	Age of Equipment	Early Termination Fee + % of Total Installed Cost
0 to less than 1 yr. old	100%	8 to less than 9 yr. old	68%
1 to less than 2 yr. old	96%	9 to less than 10 yr. old	61%
2 to less than 3 yr. old	96%	10 to less than 11 yr. old*	53%
3 to less than 4 yr. old	92%	11 to less than 12 yr. old*	43%
4 to less than 5 yr. old	89%	12 to less than 13 yr. old*	31%
5 to less than 6 yr. old	86%	13 to less than 14 yr. old*	15%
6 to less than 7 yr. old	83%	14 to less than 15 yr. old*	5%
7 to less than 8 yr. old	73%	15 years old and onward*	

* this is applicable in Extension Month's only
 * The Early Termination Fee for the Equipment is based on the percentage of the original "Total Installed Cost" of the Equipment. All applicable taxes will be added to the stated Early Termination Fee.

19. Your Signature: By signing the Agreement, you represent that you are both: (a) at least eighteen (18) years of age and (b) an individual citizen or resident of the United States and that you have all needed authorization to sign.

20. **Notice of Right to Cancel.** You may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction, unless a different time period applies under state law. See the included notice of cancellation form for an explanation of this right.

21. **Title Search.** Service Experts expressly reserves the right, prior to or during any term of the Lease to perform a title search on the Premises. If anyone who has signed the Agreement is not found on the title of the Premises, Service Experts will provide an amended Agreement reflecting only those signatories found on the title of the Premises.

SERVICE EXPERT'S ADVANTAGE PROGRAM AGREEMENT - Early Termination Fee Schedule*			
Age of Equipment	Early Termination Fee + % of Total Installed Cost	Age of Equipment	Early Termination Fee + % of Total Installed Cost
0 to less than 1 yr. old	100%	8 to less than 9 yr. old	68%
1 to less than 2 yr. old	96%	9 to less than 10 yr. old	61%
2 to less than 3 yr. old	96%	10 to less than 11 yr. old*	53%
3 to less than 4 yr. old	92%	11 to less than 12 yr. old*	43%
4 to less than 5 yr. old	89%	12 to less than 13 yr. old*	31%
5 to less than 6 yr. old	86%	13 to less than 14 yr. old*	15%
6 to less than 7 yr. old	83%	14 to less than 15 yr. old*	5%
7 to less than 8 yr. old	73%	15 years old and onward*	

* this is applicable in Extension Month's only
 * The Early Termination Fee for the Equipment is based on the percentage of the original "Total Installed Cost" of the Equipment. All applicable taxes will be added to the stated Early Termination Fee.



Service Experts

HEATING, AIR CONDITIONING & PLUMBING



CERTIFICATE OF INSTALLATION

- ☒ Equipment documentation provided to customer
- ☒ Service stickers placed on all equipment
- ☒ Explained PLUS™ Maintenance Agreement
- ☒ Explained comfort system controls and operation

As the installer of your home comfort system, I take great pride in my workmanship and have done my very best to ensure that you will enjoy many years of trouble-free operation. This certificate is your guarantee that the work has been completed in accordance with the agreement terms.

Finally, I would like to thank you for the privilege of installing your equipment, and I assure you that even though the job is complete, we look forward to serving you in the future.

Installer

Date _____

ACTION ITEMS/COMMENTS

Inst. 11/11/1960

Date of Sale

_____ / _____ / _____

Date of Delivery

Dealer Number

5 3 4 8 1 2

☐ CASH ☐ VISA ☐ M.C ☐ AMEX

☐ DISC ☐ SEI ☐ Check # _____

Print Name _____

Print Name _____

Exp. /

Acct.

Acct. _____

Auth Code

Exhibit B

Credit Plan

Credit Plan Balance Due \$

Balance Due \$

The work performed has been completed to my satisfaction.

Customer Signature _____

Date _____

THANK YOU!

Branch 162

Ohio License #: 26672

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CASE NO.
CV21942548

D3 CM

SUMMONS NO.
43499392

Rule 4 (B) Ohio

Rules of Civil
Procedure

ANTHONY BERRY, ET AL
VS

PLAINTIFF

LOWES HOME CENTERS, LLC, ET AL

DEFENDANT

SUMMONS

SERVICE EXPERTS HEATING AND AIR
CONDITIONING LLC
C/O CORPORATION SERVICE COMPANY
50 WEST BROAD STREET SUITE 1330
COLUMBUS OH 43215-0000

You have been named defendant in a summons complaint (copy attached hereto) filed in Cuyahoga County Court of Common Pleas, Cuyahoga County Justice Center, Cleveland, Ohio 44113, by the plaintiff named herein.

Said answer is required to be served on:



Plaintiff's Attorney

MATT RAMBO
6690 BETA DRIVE, STE 320
MAYFIELD VILLAGE, OH 44143-0000

You are hereby summoned and required to answer the complaint within 28 days after service of this summons upon you, exclusive of the day of service.

Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

If you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

Case has been assigned to Judge:

NANCY MARGARET RUSSO
Do not contact judge. Judge's name is given for attorney's reference only.

NAILAH K. BYRD
Clerk of the Court of Common Pleas

Nailah K. Byrd

By _____
Deputy



DATE SENT
Jan 22, 2021

COMPLAINT FILED 01/05/2021

